

INCOME TAX REFERENCE No 149 of 1993

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

Versus

CADILA CHEMICALS PVT LTD.

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.
MR MM PATEL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 06/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the following two questions, one at the instance of the revenue and other at the instance of the assessee, under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

At the instance of Revenue :

"Whether, the Income-tax Appellate Tribunal was right in law in holding that 50% of the expenditure on cost of samples distributed by the assessee should not be included in the computation for disallowance u/s.37(3A) of the Act ?"

At the instance of Assessee:

"Whether the Income-tax Appellate Tribunal was right in law in holding that 50% of the expenditure on cost of samples distributed by the assessee should be included in the computation for disallowance u/s.37(3A) of the I.T.Act ?"

2 The question pertains to assessment year 1985-86. The assessee company is involved in manufacture of drugs and selling the same. For the purpose of its business it distributes samples of those drugs. The controversy is whether the expenditure incurred in distribution of such samples is admissible as a deduction in computing total income or is part of the expenditure disallowable under section 37(3A) of the Act.

3 It is not necessary to set out the facts in greater detail in light of the decision of the Apex Court in the case of Eskayfe (now known as Smith Kline Beecham Pharmaceuticals [India] Ltd). Vs. C.I.T., 245 I.T.R.116, wherein it is specifically held that the samples of prescription drugs to doctors to make them aware that such drugs were available in the market in relation to the cure of particular affliction and, therefore, to persuade them to prescribe the same in appropriate cases; in so doing, the same would tantamount to publicity and sales promotion and hence, it fell within the scope of Section 37(3A) of the Act and would be subject to the limitations as to allowability as prescribed in the said section.

4 The Tribunal having allowed 50% of the expenditure of costs of samples the revenue has

challenged the said finding, while the assessee has challenged the finding of the Tribunal disallowing the balance 50% of the expenditure of costs of samples distributed. In light of the decision in the case of Eskayfe (Supra) the Tribunal shall have to compute the limit of disallowable sum under the provisions of Section 37(3A) and hence, we decline to answer the question referred to us. The Tribunal shall adjust its decision under section 260(1) of the Act and pass orders as are necessary to dispose of the case in conformity with the aforesaid judgment.

5 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(B.C.Patel, J) (D.A.Mehta, J)

m.m.bhatt